COMPLIANCE BOARD OPINION 98-3

May 12, 1998

Ms. Dortha M. Maguire
Ms. Peggy Newcomb
Ms. Barbara A. Bennett

The Open Meetings Compliance Board has consolidated in this opinion its response to your separate complaints that the Town of Preston had violated the Open Meetings Act in certain respects. In considering this matter, the Compliance Board has reviewed your complaints;[1] the Town's response to them, submitted on its behalf by Daniel Karp, Esquire; and a letter from Commissioner William Willis in support of the complaints.

I

Delay in Availability of December 3 Meeting Minutes

One issue involves a delay in the availability of the minutes of the Town's December 3, 1997 meeting. Commissioner Willis, in his separate correspondence, provided a chronology concerning these minutes. According to this chronology, at the January meeting Mayor VonDenBosch stated that she had noticed omissions in the minutes and that she and Commissioner Noel would redo the minutes and resubmit them at the next Town meeting for approval. On January 23, the former Town Manager, Ann Willis, submitted to the Commissioners a corrected version of the December 3 minutes. At the February 4 Town meeting, when a citizen requested a copy of the December 3 minutes, Commissioner Noel stated that they were not yet available. Finally, at the March 4 Town meeting, the minutes, in the form submitted by Ms. Willis on January 23, were made available.

In a timely response on behalf of the Town of Preston, Daniel Karp, Esquire, the Town Attorney, confirmed the basic chronology but explained that the Commissioners could

[1] The complaints contained allegations about the operations of the Town's government that are beyond the jurisdiction of the Open Meetings Compliance Board and about which the Compliance Board expresses no comment.

not find the corrected copies of the minutes in time for the February meeting, in light of the fact that the position of Town Manager had been abolished a few days before.

The Open Meetings Act provides that, "[a]s soon as practicable after a public body meets, it shall have written minutes of its session prepared." §10-509(b) of the State Government Article. This "practicability" standard recognizes the fact that minutes cannot be made available instantaneously. The purpose of the requirement is to enable people who did not attend the meeting to learn what went on.[2] This objective would be ill-served if the minutes were inaccurate. Therefore, the Act implicitly permits a public body to take a reasonable amount of time to review draft minutes for accuracy and to approve the minutes. The Town of Preston's ordinary practice – to review and approve minutes of its prior meeting at each monthly meeting – is entirely consistent with the statute. *See* Compliance Board Opinion 95-3 (July 12, 1995).

In unusual circumstances, such as the illness of an employee responsible for preparing minutes, the practicability standard in the Act allows for a lengthier delay in the preparation of minutes. What the Act does not permit is any deliberate effort on the part of the public body to delay the preparation of minutes so as to frustrate the public's right to see them.

In this situation, although the temporary disappearance of official records may be unusual, the Town provided a reasonable explanation of the circumstances, and the Compliance Board has been given no evidence of deliberate withholding of the minutes from public access. Therefore, the Compliance Board does not find a violation of the Act with respect to the time of the release of the December 3 meeting minutes.

II

Review Process for Minutes and Access to Tapes

The three complaints allege that citizens are unable to obtain timely access to minutes and tape recordings of open meetings. According to Ms. Bennett, for example, public availability of minutes is delayed until the minutes are corrected and approved by two of the three Town Commissioners. In addition, Ms. Bennett alleged that the Town Manager "was instructed that I was specifically not to have access to meeting minutes nor tapes without [Mayor] VonDenBosch's express permission." This complaint is essentially corroborated

[2] The minutes are to reflect items considered, actions taken, and votes recorded. §10-509(c)(1).

by Commissioner Willis, who pointed out that the Town has not adopted a policy regarding access to minutes, tapes of meetings, or other public records.

Mr. Karp, on the other hand, asserted that "tapes of open sessions are always available for review in the Town office during regular office hours. No citizen has never been denied access to tapes of open sessions." According to Mr. Karp, the practice of the former Town Manager was to provide Ms. Bennett "copies of draft, incorrect, and unedited minutes, before the Commissioners had an opportunity to receive and review them. The Commissioners have never denied Ms. Bennett access to minutes or tape recordings. Rather, the Commissioners simply instructed the former Town Manager to adhere to the Town's policy of submitting her drafts of the minutes to the Commissioners for review and correction before distribution to the public."

In the Compliance Board's opinion, members of the public do not have an entitlement under the Act to inspect draft, unapproved minutes, although a public body is free to make them available if it wishes to do so. Under §10-509(d), "[Open meeting] minutes of a public body are public records and shall be opened to public inspection during ordinary business hours." As a legal matter, the "minutes *of a public body*" become such only after the public body itself has had an opportunity to review and correct the work of whoever prepared the draft minutes. It is the final product, after approval by the public body, not the draft, that the Act requires to "be open to public inspection ...."

With respect to tape recordings, the Act does not address the status of tapes of open meetings.[3] If a public body chooses to make recordings of its open meetings, it should make those recordings available to the public. Even if the Open Meetings Act does not expressly require disclosure of the tapes of open meetings, the Public Information Act would.[4]

The Compliance Board is not able to resolve what appears to be a factual dispute over access to tape recordings of the Town's open meetings. Nor will the Compliance Board assess the details of the process by which individual Commissioners use tapes as a means of checking on draft minutes, for these details are not governed by the Open Meetings Act. The Compliance Board reiterates, however, that if tapes of open meetings are prepared, citizens

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[3] Under §10-509(c)(3), a public body is authorized to record a *closed* session and bar public inspection of that recording.

[4] Under §10-611(f)(1)(ii) of the State Government Article, tape recordings are encompassed by the term "public records."

are entitled to listen to those tapes. The Town should review its procedures to assure that this objective is realized.[5]

II

Notice of Meetings

Ms. Bennett alleged that the Town provides insufficient notice of its work session meetings. In support of this allegation, Commissioner Willis has provided the following information:

Meeting Date	Notice Date
March 12, 1998	March 12, 1998 (shortly before meeting began)
March 9, 1998	March 8, 1998 (afternoon)
February 14, 1998	February 11, 1998
January 28, 1998	January 27, 1998
January 7, 1998	January 7, 1998
October 1, 1997	No notice

In a memorandum to his colleagues that he provided to us, Commissioner Willis suggested that work sessions could feasibly be scheduled far enough in advance to allow for at least three working days' notice to the public.

On behalf of the Town, Mr. Karp stated that the Town "does not have set dates for work sessions. Most are called as the need arises. Notice of work sessions are promptly posted on the Town bulletin board.... [T]here is usually at least two or three days notice prior to a meeting." Mr. Karp indicated that, concerning the meeting of January 7, the notice was not posted because of an omission by the former Town Manager. Mr. Karp noted that publication of notice in the local newspaper is impracticable, because the paper publishes only one day a week.

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[5] Since tapes can readily be duplicated, perhaps a copy can be retained for public use while Commissioners are using another copy to review the accuracy of draft minutes.

Under §10-506, a public body is required to give "reasonable advance notice" of a meeting. No minimum period of notice is specified. Pointing to the policies underlying the Open Meetings Act, the Attorney General has advised "that notice of future meeting should be given as soon as practicable after the body has fixed the date, time, and place of its next meeting." *Open Meetings Act Manual* 12 (3d ed. 1997). A public body may not discourage attendance at a meeting by deliberately withholding notice: "The Act prohibits a public body from intentionally delaying the giving of notice about a meeting that the public body knows it will hold; last-minute notice under these circumstances would not be 'reasonable advance notice.'" Compliance Board Opinion 96-11 (March 30, 1998), *reprinted in* 1 *Official Opinions of the Maryland Open Meetings Compliance Board* 186, 189.

The situation is different when the need for a meeting unexpectedly arises or the scheduling of a meeting cannot be confirmed until close to the meeting date: "The Open Meetings Act is not intended as a barrier to a public body's holding of meetings on short notice, if that timing is needed to deal with urgent public issues.... If ... a public body needs to schedule a meeting on short notice, it need not delay the meeting to provide a longer period of notice for the public." *Id*. Under these circumstances, the public body complies with the Act it if notifies the public promptly after the meeting time is confirmed. As we put it in another opinion, "Advance notice is 'reasonable' if the public is notified of a future meeting promptly after the public body itself has scheduled the meeting. If a meeting is scheduled on short notice, as sometimes will be required by unexpected developments, the person responsible for the scheduling of the meeting must provide the best public notice feasible under the circumstances." Compliance Board Opinion 93-7 (June 22, 1993) *reprinted in* 1 *Official Opinions of the Maryland Open Meetings Compliance Board*, 38, 39.

Whether the Town of Preston complied with the notice requirement of the Act depends on facts that are not before the Compliance Board. If the scheduling of the meetings in question was known, or could have known, significantly before the notices were posted, the Act was violated. If, however, circumstances genuinely prevented firm scheduling until shortly before the meeting date *and* notice was posted promptly after the schedule was set, the Act was not violated. The Compliance Board expresses no opinion on the matter.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
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